

Randall B. Bateman (USB 6482)
Sarah W. Matthews (USB 13295)
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 531-9000
Facsimile: (801) 363-0400
Email: ipg@scmlaw.com, rbb@scmlaw.com, swm@scmlaw.com.
Attorneys for Plaintiff Electronic Recycling Solutions, LLC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION	
ELECTRONIC RECYCLING SOLUTIONS, LLC, a Utah Limited Liability Company, Plaintiff, vs. RECYCLE SOLUTIONS, LLC, a Utah Limited Liability Company; DARREN KNEPPER, an individual and DOES 1-5, Defendants.	COMPLAINT AND JURY DEMAND Case No. 2:16-cv-00254-BCW Magistrate Judge Brooke C. Wells Tier I

Plaintiff, Electronic Recycling Solutions, LLC, by and through its undersigned counsel of record, hereby submits its Complaint against Defendants Recycle Solutions, LLC, Darren Knepper and Does 1-5 (collectively “Defendants”) as follows:

PARTIES

1. Plaintiff, Electronic Recycling Solutions, LLC (“Electronic Recycling Solutions”) is a Utah limited liability company having a principal place of business in Tooele, Utah.

2. Defendant Recycle Solutions, LLC (“Recycle Solutions”) is a Utah limited liability company which has a principle place of business in Salt Lake City, Utah.

3. Defendant Darren Knepper (“Knepper”) is an individual who, on information and belief, has a residence in Salt Lake County, Utah.

4. On information and belief, Does 1-5 are individuals or entities which have engaged in conduct described herein whose identities are not currently known to Plaintiff.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 15 U.S.C. § 1125(a), 28 U.S.C. §§1331, 1338(a, b), and supplemental jurisdiction under 28 U.S.C. § 1367 over the claims under Utah state law, including state and common law trademark infringement, unfair competition and state trademark infringement.

6. Venue is proper in this district by virtue of 28 U.S.C. § 1391 because Defendants reside in this district and the acts complained of occurred in this district.

GENERAL ALLEGATIONS

7. Plaintiff Electronic Recycling Solutions is a processor of used electronics. Electronic Recycling Solutions accepts used electronics and refurbishes those which have further useable life. Those electronics which are no longer usable are disassembled and the parts sold to companies which extract valuable metals and other materials, thereby reducing waste going to landfills and damaging the environment.

8. Since at least as early as April 21, 2008, Electronic Recycling Solutions has used the trademark ELECTRONIC RECYCLING SOLUTIONS to market its services.

9. Over the last eight (8) years, Electronic Recycling Solutions has developed considerable goodwill in its trademark and has become one of the largest electronic waste processors in the State of Utah.

10. Through its marketing efforts, Electronic Recycling Solutions has leveraged its goodwill to obtain contracts with some of the largest collectors of electronic waste, including Deseret Industries.

11. Electronic Recycling Solutions is OHSAS 18001, ISO 14001, ISO 9001 and R2 certified.

12. Because computers and other electronics often contain sensitive financial and other data about people, Electronic Recycling Solutions offers DOD certified data erasing of hard drives.

13. Several years ago Defendant Knepper worked for a competing processor of electronic waste.

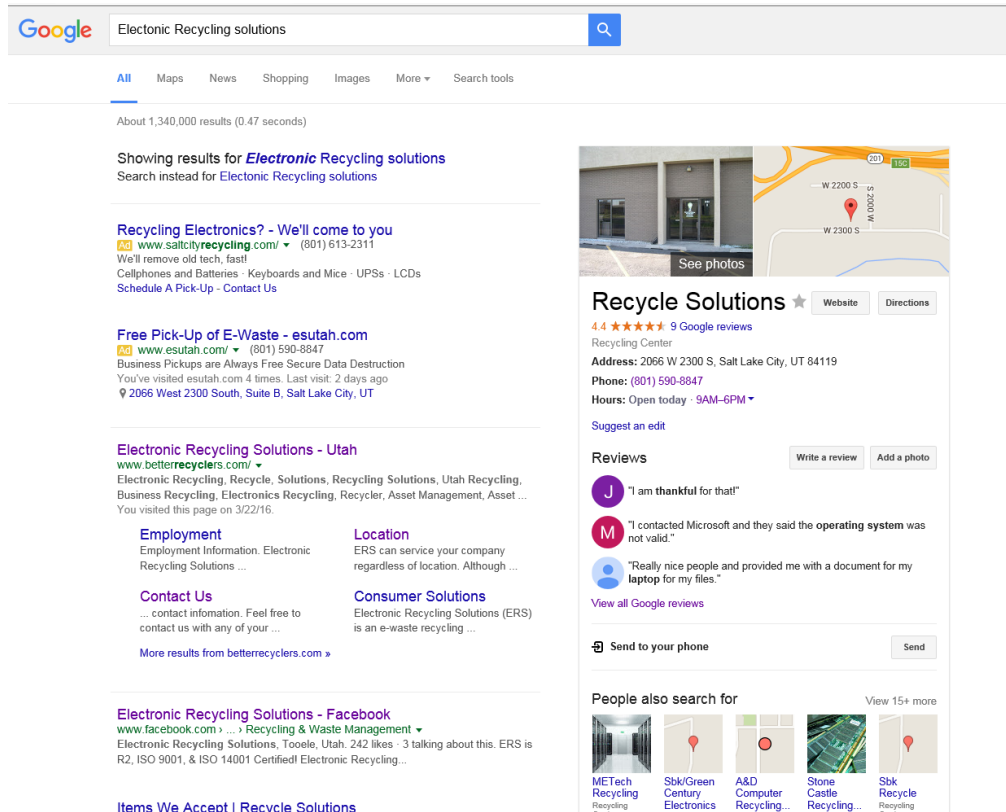
14. When the owner of Electronic Recycling Solutions visited, Mr. Knepper made favorable comments regarding the name Electronic Recycling Solutions and indicated that he had wanted to start a company with that name.

15. At some time thereafter, Knepper left his previous employer and started Defendant Recycle Solutions.

16. On information and belief, it was the intent of Defendant Knepper to trade off the goodwill developed by Electronic Recycling Solutions.

17. Since adopting the name Recycle Solutions, Defendant Knepper has created confusion among Utah consumers regarding the two entities.

18. A GOOGLE search for “Electronic Recycling Solutions” produces not only a link to Plaintiff Electronic Recycling Solutions, but a far larger map showing Defendant Recycle Solutions:



19. Likewise, a search for “electronic recycling solutions” in Bing produces an advertisement and map for Recycle Solutions which is set out above the organic listing for Electronic Recycling Solutions.

The screenshot shows a Google search for "electronic recycling solutions". The search bar at the top contains the text "electronic recycling solutions" and a magnifying glass icon. Below the search bar, there are tabs for "Web", "Images", "Videos", "Maps", "News", and "Explore". The "Web" tab is selected, showing 15,000,000 results. The search filters are set to "Any time" and "Near Salt Lake City, UT".

The search results include several ads and organic results:

- Best Buy® Recycling**: Ad from www.BestBuy.com. Recycle Your Electronics At Best Buy®. Conditions Apply.
- IT Asset Disposition**: Ad from www.ironmountain.com. Destroy & Recycle Old IT Assets. e-Stewards® Certified Recycler.
- Tech Recycling - Staples®**: Ad from www.Staples.com/Tech_Recycling. Free Recycling For Your Tech Items. See List of Eligible Products Here.
- Recycling Services**: Ad from www.RepublicServices.com. Let Republic Services Handle Your Recycling Needs. Request Services.

Below the ads, there is a section titled "Including results for *electronic recycling solutions*. Do you want results only for electronic recycling solutions?".

The organic results include:

- Electronic Recycling Solutions - Utah**: www.betterrecyclers.com. ERS provides electronic recycling solutions to business while recovering value out of used assets. We are R2, ISO 9001, ISO 14001, and OHSAS 18001 certified recycler. Contact Us · Location · News Blog · Why ERS · Business Solutions
- Recycle Solutions | Your Recycling Partner**: www.esutah.com. Recycle Solutions specializes in the recycling of computers and other electronic devices. Electronics recycling helps the environment. Items We Accept · About Us · Secure Data Destruction · Buy/Sell · Schedule a Pickup
- Electronic Recycling Solutions | LinkedIn**: <https://www.linkedin.com/company/electronic-recycling-solutions>. Learn about working at Electronic Recycling Solutions. Join LinkedIn today for free. See who you know at Electronic Recycling Solutions, leverage your professional ...
- 3 Solutions to Electronic Waste - Mother Earth Living**: www.motherearthliving.com/green-living/3-solutions-to-e-waste.aspx. 3 Solutions to Electronic Waste Recycle your old toxic electronics that just seem to unavoidably create clutter.

At the bottom, there is a section titled "Related searches for *electronic recycling solutions*" with links to "Recycling Used Electronics" and "Recycling Solutions Inc".

On the right side of the search results, there is a map showing the location of a recycling center. The map is titled "Recycle Solutions" and shows a location at 2066 W 2300 S, West Valley City, UT 84119. The map includes a street view and a larger map button. Below the map, there is a section titled "Recycle Solutions" with buttons for "Directions" and "Website". The address and phone number are listed: Address: 2066 W 2300 S, West Valley City, UT 84119. Phone: (801) 590-8847.

Below the map, there is a section titled "Ads" with two ads:

- Electronic Digital Meridi...**: \$76.99 on eBay.
- Electronic Device Recy...**: \$22.09 on eBay.

At the bottom right, there is a section titled "Recycle Computer" with an ad from www.superpages.com. Local Computer Recycling Center. Call Our Friendly Staff Today. See your ad here ».

Below the ads, there is a section titled "Related searches" with links to "Recycling Used Electronics", "Recycling Electronic Equipment", "Electronics Recycling Chicago", and "Recycling Solutions Inc".

20. Defendant's adoption of a name substantially similar to Electronic Recycling Solutions' trademark and marketing has created instances of actual confusion and a likelihood of confusion among the general public.

21. Defendants have been warned of their conduct, but have refused to cease their activities, which are creating a likelihood of confusion.

22. On information and belief, Knepper has a long criminal history, including convictions for assault, attempted forgery and theft.

23. In light of Knepper's long criminal history and the confidential information which Electronic Recycle Solutions removes for its customers, a false association between Knepper and

Recycle Solutions and Electronic Recycle Solutions could be devastating for Electronic Recycle Solution's business.

FIRST CLAIM FOR RELIEF

**FALSE DESIGNATION OF ORIGIN
15 U.S.C. § 1125(a)**

24. Electronic Recycling Solutions hereby realleges and incorporates by this reference the preceding paragraphs as if fully set forth herein.

25. Electronic Recycling Solutions uses its trademark ELECTRONIC RECYCLING SOLUTIONS in commerce.

26. Electronic Recycling Solutions and Recycle Solutions are competitors.

27. Recycle Solutions and Darren Knepper have created a likelihood of confusion by adopting a similar business name to that of Electronic Recycling Solutions and by marketing their business in such a way that consumers are likely to be confused and to be deceived as to the affiliation, connection or association of Defendants with Electronic Recycling Solutions.

28. The actions of Recycle Solutions and Darren Knepper have created actual instances of confusion.

29. A false association between Recycle Solutions and Electronic Recycling Solutions would not only mislead consumers, but could have significant negative consequences on Electronic Recycling Solutions.

30. Therefore, Electronic Recycling Solutions makes a claim against Defendants Recycle Solutions and Darren Knepper for false designation of origin under 15 U.S.C. § 1125(a).

SECOND CLAIM FOR RELIEF

Unfair Competition Utah Code 13-5a-101 *et seq.*

31. Plaintiff hereby realleges and incorporates by this reference the preceding paragraphs as if fully set forth herein.

32. Defendants Recycle Solutions and Darren Knepper have engaged in unfair competition by infringing Electronic Recycling Solutions trademark, thereby causing a diminution in the value of Electronic Recycling Solutions intellectual property.

33. Wherefore, Electronic Recycling Solutions states a claim against Recycle Solutions and Darren Knepper for unfair competition under the Utah Unfair Competition Act.

THIRD CLAIM FOR RELIEF

Common Law Trademark Infringement

34. Electronic Recycling Solutions incorporates and re-alleges the preceding paragraphs of this Complaint, as if the same were fully set forth herein, and further alleges:

35. Electronic Recycling Solutions has used and developed good will in the mark ELECTRONIC RECYCLING SOLUTIONS.

36. Recycle Solutions and Darren Knepper have adopted the mark RECYCLE SOLUTIONS for substantially the same services in the same geographic area.

37. Recycle Solutions and Darren Knepper have adopted the mark RECYCLE SOLUTIONS with knowledge of Electronic Recycling Solution's mark.

38. On information and belief, Recycle Solutions and Darren Knepper have adopted the mark RECYCLE SOLUTIONS to trade off the goodwill of Electronic Recycling Solution's mark.

39. Wherefore, Electronic Recycling Solutions states a claim against Recycle Solutions and Darren Knepper for common-law trademark infringement.

FOURTH CAUSE OF ACTION

Trademark Infringement Utah Code 70-3a-402

40. Electronic Recycling Solutions incorporates and re-alleges the preceding paragraphs of this Complaint, as though fully set forth herein, and further alleges:

41. Electronic Recycling Solutions has expended considerable time and resources developing its trademark ELECTRONIC RECYCLING SOLUTIONS.

42. Electronic Recycling Solutions is the owner of Utah Trademark Registration Number 9743636-0190 for ELECTRONIC RECYCLING SOLUTIONS.

43. Defendants Recycle Solutions and Darren Knepper have created a likelihood of confusion with Electronic Recycling Solutions registered trademark by use of the mark RECYCLE SOLUTIONS for the same services.

44. On information and belief, Defendants' actions have been intentional and have sought to trade off Electronic Recycling Solutions' goodwill in its trademarks.

45. Wherefore, Electronic Recycling Solutions states a claim against Recycle Solutions and Darren Knepper for state trademark infringement.

PRAYER FOR RELIEF

WHEREFORE, Electronic Recycling Solutions prays for judgment against the Defendants as follows:

A. Enjoining the Defendants, and all other persons participating or acting in concert with them, from using any mark which is likely to create confusion with ELECTRONIC RECYCLING SOLUTIONS.

B. Awarding to Electronic Recycling Solutions its actual and compensatory damages and awarding punitive damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs.

C. Awarding to Electronic Recycling Solutions Defendants' profits associated with the use of the RECYCLE SOLUTIONS mark.

D. Awarding such other and further relief as is just and equitable.

Electronic Recycling Solutions demands a trial by jury on all matters so triable.

DATED this 31st day of March, 2016.

SNOW CHRISTENSEN & MARTINEAU

/s/Randall B. Bateman

Randall B. Bateman

Sarah W. Matthews

Attorneys for Plaintiff

Electronic Recycling Solutions, LLC